The Directors possess a power paramount, as the right hon. gentleman said, to everything else, the power of recalling the Governor-General, by which any great system of policy may be at once interrupted. And they have this power, although the Governor-General must have been appointed by the Crown, and the appointment sanctioned by the Directors. The functions of Government and the responsibility have been divided between the Directors, the Board of Control, and the Governor-General in India; the Board of Control representing the Government of the day, responsible to this House, responsible to public opinion, appointed by the Crown, and exercising functions delegated by it; the Court of Directors, elected by the gentlemen and ladies who happen to be holders of India stock, many of whom are totally ignorant of everything relating to Indian interests, and perhaps knowing nothing about Calcutta, Bombay, or Madras, except what they learn from the candidates for the Directorship as to the Presidency to which the cadetship is to belong which is promised in return for their votes. The Directors are undoubtedly, in general, men of great experience and knowledge of India, but they are elected by a body of persons who have no peculiar faculty for choosing persons qualified to govern a great Empire in the East. Then comes the Governor-General, invested with great, separate, and, independent powers, and among these three authorities it is obvious that dispatch and unity of purpose can hardly by possibility exist .... before a dispatch upon the most important matter can go out to India it has to oscillate between Cannon Row and the India House .... it is proposed by one party, altered by the other, altered again by the first, and sent back to the other .... The result in cases of material difference must necessarily be a middle term, satisfying the opinions of neither, unsatisfactory therefore to both, and probably less advantageous to the public service than the opinion of either would have been had it been entirely adopted. Therefore I say that this system of check and counter-check may be carried too far

Three governing authorities: Directors, Board of Control, Governor-General

Results of divided responsibility—delay and half-hearted measures

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for Her Majesty, by Warrant under her Royal Sign Manual, countersigned by the Chancellor of the Exchequer, to grant to any person who, having held the office of Member of the Council for the period of ten years or upwards, shall so resign by reason of infirmity disabling him from a due execution of the duties of the office, a retiring pension during life of five hundred pounds : provided, that if at any time hereafter it would appear to Parliament expedient to reduce the number or otherwise deal with the constitution of the said Council, no member of Council who has not served in his office for a period of ten years shall be entitled to claim any compensation for the loss of his office or for any alteration in the terms and conditions under which the same is held.

Pension for members of Council of India

* * * *

Business of Council of India

19. The Council shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India, but every order or communication sent to India shall be signed by one of the Principal Secretaries of State ; and, save as expressly provided by this Act, every order in the United Kingdom in relation to the government of India under this Act shall be signed by such Secretary of State ; and all despatches from Governments and Presidencies in India, and other despatches from India, which if this Act had not been passed should have been addressed to the Court of Directors or to their Secret Committee, shall be addressed to such Secretary of State.

Secretary of State to be channel of communications between England and India

Committees of Council of India

20. It shall be lawful for the Secretary of State to divide the Council into Committees for the more convenient transaction of business, and from time to time to rearrange such Committees, and to direct what departments of the business in relation to the Government of India under this Act shall be under such Committees respectively, and generally to direct the manner in which all such business shall be transacted.

21. The Secretary of State shall be the President of the Council, with power to vote ; and it shall be

President and Vice-President of Council of India

lawful for such Secretary of State in Council to appoint from time to time any member of such Council to be Vice-President thereof; and any such Vice-President may at any time be removed by the Secretary of State.

Procedure for meetings of Council of India

22. All powers by this Act required to be exercised by the Secretary of State in Council, and all powers of the Council shall and may be exercised at meetings of such Council, at which not less than five members shall be present; and at every meeting the Secretary of State, or in his absence the Vice-President, if present, shall preside; and in the absence of the Secretary of State and Vice-President, one of the members of the Council present shall be chosen by the members present to preside at the meeting: and such Council may act notwithstanding any vacancy therein: meetings of the Council shall be convened and held when and as the Secretary of State shall from time to time direct: provided that one such meeting at least be held in every week.

Special position of Secretary of State in relation to Council of India

23. At any meeting of the Council at which the Secretary of State is present, if there be a difference of opinion on any question other than the question of the election of a Member of Council, or other than any question with regard to which a majority of the votes at a meeting is hereinafter declared to be necessary, the determination of the Secretary of State shall be final; and in case of an equality of votes at any meeting of the Council, the Secretary of State, if present, and in his absence the Vice-President, or presiding member, shall have a casting vote; and all acts done at any meeting of the Council in the absence of the Secretary of State, except the election of a Member of the Council, shall require the sanction or approval in writing of the Secretary of State; and in case of difference of opinion on any question decided at any meeting, the Secretary of State may require that his opinion and the reasons for the same be entered in the minutes of the proceedings, and any Member of the Council who may have been present at the meeting may require that his opinion, and any reasons for the same

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Constitution of Presidency Legislative Councils

29. For the better exercise of the power of making laws and regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the members whereof his Council now by law consists, or may consist, termed herein ordinary members, nominate to be additional members the Advocate-General of the Presidency, or officer acting in that capacity, and such other persons, not less than four nor more than eight in number, as to him may seem expedient, to be members of Council, for the purpose of making laws and regulations only; and such members shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose; provided that not less than half of the persons so nominated shall be non-official persons, as hereinbefore described; and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

Non-official members

Tenure of membership

30. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination.

Resignation of membership

31. It shall be lawful for any such additional member of Council to resign his office to the Governor of the Presidency; and on acceptance of such resignation by the Governor of the Presidency, such office shall become vacant.

Provision for filling up vacancies in Presidency Legislative Council

32. On the event of a vacancy occurring by the death, acceptance of office, or resignation accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor of the Presidency to summon any person as additional Member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional member so dying, accepting office, or resigning, was nominated: Provided always, that it shall not be lawful for him by such nomination to diminish the proportion of non-official members hereinbefore directed to be nominated.

and fourth years of King William the Fourth, chapter eighty-five, shall be, and the same are declared to be, applicable to the case.

Rights of Crown and Secretary of State left intact

52. Nothing in this Act contained shall be held to derogate from or interfere with (except as hereinbefore expressly provided) the rights vested in Her Majesty, or the powers of the Secretary of State for India in Council, in relation to the government of Her Majesty's dominions in India, under any law in force at the date of the passing of this Act; and all things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such government, shall have the same force and validity as if this Act had not been passed.

7. SIR CHARLES WOOD'S SPEECH ON THE INDIAN COUNCILS BILL, 1861.

(House of Commons, June 6, 1861).

[On May 19, 1862, Sir Charles Wood wrote to Lord Elgin, "You have a Council which occasionally makes laws, and when it makes laws certain other people sit with your ordinary Councillors. But your Council is one and the same Council; and we took very great pains throughout the Act to avoid any word which could favour the action of the separate existence of a legislative council. It had been improperly so constituted by Dalhousie, and we took great pains to undo his mistake." A few days earlier the Secretary of State had reminded the Governor-General, "... ...you have no legislative council." Probably Lord Elgin did not agree with this view. His biographer says, "... ...the final impression left by a study of Elgin's letters to all his official correspondents is that he welcomed the idea of the additional, and especially of the non-official, legislative councillors, and that, had he lived, the legislative council would have found encouragement, and seen development, at his hands. Wood had made light of the whole affair, and refused to allow the use of terms like 'session' and 'adjournment' in dealing with it. But the constitutional good sense of Elgin saw that, after all, important people had been summoned to the meetings in question, and that it was impossible to ignore what was an actual fact."

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until the present year; and Lord Canning who was very anxious that such a measure should be passed, consented to defer his departure from India in order that he, with his great experience of that country, might introduce the change. The present constitution of the Council for legislative purposes having failed, we have naturally to consider what should be substituted and in doing so we must advert to the two extreme notions with regard to legislation which prevail in India. The notion of legislation which is entertained by a Native is that of the chief or sovereign, who makes what laws he pleases. He has little or no idea of any distinction between the executive and legislative functions of Government. A Native chief will assemble his nobles around him in the Durbar, where they freely and frankly express their opinions; but having informed himself by their communications, he determines by his own will what shall be done. Among the various proposals which have been made for the government of India is one that the power of legislation should rest entirely on the Executive, but that there should be a consultative body; that is, that the Governor-General should assemble, from time to time, a considerable number of persons, whose opinions he should hear, but by whose opinions he should not be bound; and that he should himself consider and decide what measures should be adopted.

Should legislation be entrusted solely to the Executive?

In the last Session of Parliament Lord Ellenborough developed a scheme approaching this in character in the House of Lords; but . . . . Lord Canning considers this impossible and all the Members of his Government, as well as the Members of the India Council, concur in the opinion that, in the present state of feeling in India, it is quite impossible to revert to a state of things in which the Executive Government alone legislated for the country. The opposite extreme is the desire which is natural to Englishmen wherever they be that they should have a representative body to make the laws by which they are to be governed. I am sure, however, that everyone who considers the condition of India will see that it is utterly impossible

Expert opinion opposed to legislation by the Executive alone

represent the Province. The result is that, the election taking place under a system of rotation, whole divisions are left unrepresented in the Council. Out of the 6 Divisions in Bengal at the present moment the Presidency Division, which is the most important, and the Chota Nagpur and Orissa Divisions, are left out in the representation. I am aware that this is a faulty arrangement which might be rectified by lumping up the Divisions, as is done elsewhere, so as to enable the whole Province to take part in the elections. But is it possible under any conceivable arrangement, by any form of administrative manipulation, to secure, in the words of Mr. Gladstone, the living representation of the Indian people, or, in the words of Lord Salisbury, the representation of the whole community, and not of small sections of the people, without materially adding to the strength of the elective element in the Councils? But we are confronted with a difficulty on the very threshold. Under Section 1 of the Indian Councils Act of 1892, the maximum number of additional members for the Governor-General's Council is fixed at 16, and the maximum number of additional members for the Legislative Councils of Madras and Bombay is fixed at 20, and as regards Bengal and the North-Western Provinces the position seems to be still more unsatisfactory. The number of members for the Bengal Council is not to exceed 20, and that for the North-Western Provinces is not to exceed 15. . . I am well aware of the difficulties of the Government. They must have a standing majority in the Councils. They will say: "It is all very well for you to raise these objections. Your counsel is a counsel of perfection, we admit. But there are practical difficulties in the way, which we, as practical administrators, must take note of. We must have a standing majority in the Councils. If we add to the elective element we must add to the number of nominated members. The requisite number of officials may not be available at the Presidency towns, or, if available, their appointment to the Councils may lead to serious administrative inconvenience and may involve additional expense—a matter

Case of Bengal

Anticipated reply of the Government

ing were not maintained as to one great principle which from the beginning has underlaid the whole system. That principle is that the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established by the Crown, under Parliamentary enactment, in India itself.

'Final control and direction of the affairs of India rest with the Home Government'.

"The Government established in India is (from the nature of the case) subordinate to the Imperial Government at Home. And no Government can be subordinate, unless it is within the power of the superior Government to order what is to be done or left undone, and to enforce on its officers, through the ordinary and constitutional means, obedience to its directions as to the use which they are to make of official position and power in furtherance of the policy which has been finally decided upon by the advisers of the Crown.

"Neither can I admit that it makes any real difference in the case if the directions issued by the Imperial Government relate to what may be termed legislative as distinguished from executive affairs. It may be quite as essential, in order to carry into effect the views of the Imperial Government, as to the well-being of Her Majesty's Indian dominions, that a certain measure should be passed into a law, as that a certain act, described in common language as executive, should be performed. But if it were indeed the case, as your argument would represent it to be, that the power of the Imperial Government were limited to the mere interposition of a veto on Acts passed in India, then the Government of the Queen, although it could resist the passing of an injurious law, would be helpless to secure legislative sanction for any measures, however essential it might deem them to be, for the welfare or safety of her Indian Empire. I think that, on reconsideration, you will see how inadequate such a power would be to regulate and control the affairs of that Empire, and how small a part it would represent of the supreme and final authority which has always

'Home' Government entitled to issue directions regarding executive as well as legislative affairs

'Supreme and final authority' belongs to the Government of the Crown.